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Plaintiffs move to strike defendants' affirmative defenses to the effect that

The last time I reviewed the scope and application of the ceiling was in a


Plaintiffs now ask me to revisit those rulings in a different context. Plaintiffs also ask me to define the scope of the recovery ceiling more clearly, and to rule on its constitutionality. I decline to rule on any of these issues. The record is imperfect and in the process of being developed, and a ruling would be limited, unworkable and premature.

The potentially applicable insurance, covering the City and covering the contractors, has not yet been adequately produced and, given the surrounding uncertainty and confidentiality, sufficiently inspected or evaluated. The record of the relationship between federal, state and municipal authority, control of the workplace, and supervision and direction of the work force also has not been evaluated. The relevant facts, medical history, and bona fides of 10,000 claimants have been neither shown nor evaluated. Without such information and much else, the questions posed by plaintiffs' motion are essentially academic. Rulings at this juncture would be premature.

Accordingly, even before opposition papers are filed, I deny the motions, without prejudice to renewal at some later time.

SO ORDERED.

Dated: April 16, 2008
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge